

House Bill 1371 (AS PASSED HOUSE AND SENATE)

By: Representatives Graves of the 137th, Carter of the 159th, Harbin of the 118th, Stephens of the 164th, and Parrish of the 156th

A BILL TO BE ENTITLED

AN ACT

To amend Chapter 4 of Title 26 of the Official Code of Georgia Annotated, relating to pharmacists and pharmacies, so as to enact "The Pharmacy Audit Bill of Rights"; to provide for a short title; to set out a list of rights of pharmacies undergoing audits; to provide for an appeal process; to provide for applicability; to provide for an effective date; to provide for related matters; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Chapter 4 of Title 26 of the Official Code of Georgia Annotated, relating to pharmacists and pharmacies, is amended by adding a new Code section to the end of Article 6, relating to pharmacies, to read as follows:

"26-4-118.

(a) This Code section shall be known and may be cited as 'The Pharmacy Audit Bill of Rights.'

(b) Notwithstanding any other law, when an audit of the records of a pharmacy is conducted by a managed care company, insurance company, third-party payor, the Department of Community Health under Article 7 of Chapter 4 of Title 49, or any entity that represents such companies, groups, or department, it shall be conducted in accordance with the following bill of rights:

(1) The entity conducting the initial on-site audit must give the pharmacy notice at least one week prior to conducting the initial on-site audit for each audit cycle;

(2) Any audit which involves clinical or professional judgment must be conducted by or in consultation with a pharmacist;

(3) Any clerical or record-keeping error, such as a typographical error, scrivener's error, or computer error, regarding a required document or record may not in and of itself

1 constitute fraud; however, such claims may be subject to recoupment. No such claim
2 shall be subject to criminal penalties without proof of intent to commit fraud;

3 (4) A pharmacy may use the records of a hospital, physician, or other authorized
4 practitioner of the healing arts for drugs or medicinal supplies written or transmitted by
5 any means of communication for purposes of validating the pharmacy record with respect
6 to orders or refills of a legend or narcotic drug;

7 (5) A finding of an overpayment or underpayment may be a projection based on the
8 number of patients served having a similar diagnosis or on the number of similar orders
9 or refills for similar drugs; however, recoupment of claims must be based on the actual
10 overpayment or underpayment unless the projection for overpayment or underpayment
11 is part of a settlement as agreed to by the pharmacy;

12 (6) Each pharmacy shall be audited under the same standards and parameters as other
13 similarly situated pharmacies audited by the entity;

14 (7) A pharmacy shall be allowed at least 30 days following receipt of the preliminary
15 audit report in which to produce documentation to address any discrepancy found during
16 an audit;

17 (8) The period covered by an audit may not exceed two years from the date the claim was
18 submitted to or adjudicated by a managed care company, insurance company, third-party
19 payor, the Department of Community Health under Article 7 of Chapter 4 of Title 49, or
20 any entity that represents such companies, groups, or department;

21 (9) An audit may not be initiated or scheduled during the first seven calendar days of any
22 month due to the high volume of prescriptions filled during that time unless otherwise
23 consented to by the pharmacy;

24 (10) The preliminary audit report must be delivered to the pharmacy within 120 days
25 after conclusion of the audit. A final audit report shall be delivered to the pharmacy
26 within six months after receipt of the preliminary audit report or final appeal, as provided
27 for in subsection (c), whichever is later; and

28 (11) The audit criteria set forth in this subsection shall apply only to audits of claims
29 submitted for payment after July 1, 2006. Notwithstanding any other provision in this
30 subsection, the agency conducting the audit shall not use the accounting practice of
31 extrapolation in calculating recoupments or penalties for audits.

32 (c) Recoupments of any disputed funds shall only occur after final internal disposition of
33 the audit, including the appeals process as set forth in subsection (d) of this Code section.

34 (d) Each entity conducting an audit shall establish an appeals process under which a
35 pharmacy may appeal an unfavorable preliminary audit report to the entity. If, following
36 the appeal, the entity finds that an unfavorable audit report or any portion thereof is

1 unsubstantiated, the entity shall dismiss the audit report or said portion without the
2 necessity of any further proceedings.

3 (e) Each entity conducting an audit shall provide a copy of the final audit report, after
4 completion of any review process, to the plan sponsor.

5 (f) This Code section shall not apply to any investigative audit which involves fraud,
6 willful misrepresentation, or abuse including without limitation investigative audits under
7 Article 7 of Chapter 4 of Title 49, Code Section 33-1-16, or any other statutory provision
8 which authorizes investigations relating to insurance fraud."

9 **SECTION 2.**

10 This Act shall become effective upon its approval by the Governor or upon its becoming law
11 without such approval.

12 **SECTION 3.**

13 All laws and parts of laws in conflict with this Act are repealed.